

BEFORE THE FAIR EMPLOYMENT AND HOUSING COMMISSION
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation)	
of the)	
)	
DEPARTMENT OF FAIR EMPLOYMENT)	Case No. H 95-96
AND HOUSING)	H 95-96
)	Q-0634-
v.)	01-sh
)	C 96-97-
RIVER MEADOW TRAILER PARK; and)	089
BRITTA JESPERSEN, Owner;)	98-15
KIM JESPERSEN, Individually)	
and as Managing Agent)	
)	
Respondents.)	
-----)	DECISION
-)	
TONI L. HOLLIFIELD, Individually)	
and as Guardian ad Litem for)	
)	
KARA HOLLIFIELD, a Minor, and)	
ALISHA FRAGA, a Minor,)	
)	
Complainants.)	

Hearing Officer Ann M. Noel heard this matter on behalf of the Fair Employment and Housing Commission on October 7 and 8, 1997, in Weaverville, California. Teresa M. Fee, Staff Counsel, represented the Department of Fair Employment and Housing. Respondents Britta Jespersen and Kim Jespersen were present at the hearing and represented themselves and respondent River Meadow Trailer Park in propria persona. Complainant Toni L. Hollifield was present at the hearing. The transcripts were received and the case was submitted on November 17, 1997. Hearing Officer Noel issued a proposed decision in this matter on January 16, 1998.

The Commission decided not to adopt the proposed decision and, on February 4, 1998, notified the parties of the opportunity to file further argument by March 12, 1998. The parties timely filed briefs in further argument. Finn B.

Jespersen, the son of respondent Britta Jespersen and brother of respondent Kim Jespersen, filed respondents' brief in further argument.

After consideration of the entire record and all arguments, the Commission makes the following findings of fact, determination of issues, and order.

FINDINGS OF FACT

1. On February 8, 1996, Toni L. Hollifield (complainant) filed two written, verified complaints with the Department of Fair Employment and Housing (Department) on behalf of herself and as guardian ad litem for her two minor children, Kara Hollifield and Alisha Fraga, against, respectively, the River Meadow Trailer Park, and its manager, Kim Jespersen. Both complaints alleged that, within the preceding year, Jespersen, as manager of the River Meadow Trailer Park, harassed and discriminated against complainant on the basis of her sex, female, in violation of Government Code section 12955, subdivisions (a) and (f), of the Fair Employment and Housing Act (FEHA or Act) (Gov. Code §12900, et seq.).

2. The Department is an administrative agency empowered to issue accusations under Government Code section 12930, subdivision (h), of the Act. On February 7, 1997, Nancy C. Gutierrez, in her official capacity as Director of the Department, issued an accusation against River Meadow Trailer Park (respondent Trailer Park) and Kim Jespersen (respondent Kim Jespersen), charging respondents with unlawful housing discrimination against complainant based on her sex, female, in violation of Government Code section 12955, subdivisions (a) and (k). The accusation alleged that respondent Kim Jespersen sexually harassed complainant and made a dwelling unavailable to complainant because of her sex. The Department served the accusation by certified mail, return receipt requested, on Britta Jespersen and on Kim Jespersen. Kim Jespersen signed both certified mail return receipts.

3. On September 18, 1997, the Department filed a First Amended Accusation which added complainant's children, Kara Hollifield and Alisha Fraga as complainants,^{1/} and named

^{1/} To avoid confusion, complainant's children will hereafter be referred to by their names rather than as complainants.

complainant as their guardian ad litem. The amended accusation also added Britta Jespersen (respondent Britta Jespersen), the owner of the Trailer Park, as a named respondent. The Department served the First Amended Accusation by certified mail, return receipt requested, on Britta Jespersen and on Kim Jespersen. Britta Jespersen signed both certified mail return receipts. The matter proceeded to hearing on the First Amended Accusation.

4. Respondent Trailer Park is located in Douglas City, California. The Trailer Park rents trailers and trailer spaces for residential use. There are two homes on the premises and sites for 36 trailers. Respondent Trailer Park is a housing accommodation within the meaning of Government Code sections 12927, subdivision (d), and 12955, subdivision (a).

5. Respondent Britta Jespersen was, at all times relevant to this matter, the sole owner of respondent Trailer Park, and therefore, an "owner" of a housing accommodation within the meaning of Government Code sections 12927, subdivision (e), and 12955, subdivision (a). At all relevant times herein, respondent Britta Jespersen lived alone in a trailer on the premises of respondent Trailer Park.

6. At all times relevant to this matter, respondent Britta Jespersen had minimal interaction with her tenants at respondent Trailer Park. Instead, she authorized her son, respondent Kim Jespersen, to serve as her resident manager and managing agent. Britta Jespersen did not maintain any written policies against discrimination or harassment, and did not inform Kim Jespersen about his duties under the FEHA. Kim Jespersen interviewed applicants, signed rental agreements with the Trailer Park's tenants, and collected rent from the tenants. He usually consulted with his mother before accepting or evicting a tenant. He was also responsible for maintenance and repairs at the Trailer Park, and responded to tenant problems day and night. For his services, Britta Jespersen gave Kim Jespersen the manager's house on the premises rent free. Kim Jespersen lived there with his wife, Betty Jespersen, and her two teenage daughters, Leanne Jespersen and Lisa Hensley. Respondent Kim Jespersen is a "managing agent" and an "owner" within the meaning of Government Code sections 12927, subdivision (e), and 12955, subdivision (a).

7. In June 1995, complainant was living temporarily with her brother and sister-in-law in Douglas City, California, and was searching for a trailer space rental to live in a trailer she had acquired. Complainant had previously owned her own business and property but, because of poor business management and substance abuse, had lost everything. Complainant had been

recently homeless in Yolo County, living in her truck with her two children, Kara Hollifield and Alisha Fraga, then ages two and one-half and five, respectively. She was recovering from a methamphetamine addiction and was looking to rebuild her life and self-respect in a new area, close to her family members. She wanted to provide a stable home for herself and her two children.

8. On June 25, 1995, complainant rented a trailer space from respondents for \$175.00 per month. She and respondent Kim Jespersen discussed complainant's source of income, the condition of her trailer, and the fact that the state Department of Housing and Community Development (DHCD), Division of Codes and Standards, gave trailer owners 90 days to bring their trailers up to code. Complainant told Jespersen that she received Aid to Families with Dependent Children (AFDC). Complainant told Jespersen that the trailer was a salvaged unit and that she would have to get a new title for it after it had passed state inspection. The trailer was approximately 20 years old, with an acceptable outside appearance, but the interior was in need of repair.

9. On July 11, 1995, complainant moved her trailer into respondent Trailer Park. She connected the trailer to a propane tank and to the Trailer Park's electricity, water, and sewer lines and began repairs on the inside of the trailer.

10. Kim Jespersen was friendly and helpful to complainant, and advised her how to connect the electrical and water lines. He came by on a daily basis to check on complainant's progress and to offer his assistance.

11. On approximately July 28, 1995, complainant was attempting to connect a water line to her trailer. She was underneath her trailer, wearing a bathing suit, when Kim Jespersen came by. Complainant attempted to show Jespersen the

problem with the water line, but Jespersen kept staring at complainant's breasts. Complainant became quite uncomfortable and went back into her trailer to put on a blouse over her bathing suit.

12. Complainant moved into the Trailer Park with her two daughters at the beginning of August. The trailer had not yet passed state inspection.

13. Complainant's stepfather was very sick with cancer. Complainant was very close to her stepfather, and was very worried about him. Kim Jespersen's father had died of cancer, and he and complainant talked about complainant's sorrow, pain,

and fears about her stepfather dying. Complainant called Jespersen for help and advice, and Jespersen would come over, sometimes bringing his daughter Lisa Hensley. Lisa Hensley sometimes watched complainant's children while complainant went to see her family.

14. In the middle of August 1995, complainant brought several items of personal property to the Trailer Park. These included an electric golf cart, children's toys, a dining room set, and some used ski equipment. Kim Jespersen thought the golf cart would be useful around the Trailer Park, and told complainant that he was interested in buying it and some of complainant's other items. Complainant needed help with repairs to get the trailer ready for inspection and for a room addition she wanted to build for her daughter's bedroom. Complainant and Jespersen orally agreed to trade the golf cart and other personal property for Jespersen's help with the repairs and the room addition.

15. In August and September 1995, Kim Jespersen had frequent contact with complainant. Jespersen engaged in unwelcome sexual conduct toward complainant during many of their encounters.

a. On one occasion in August, Kim Jespersen was installing an electrical outlet in complainant's bathroom. Complainant stood behind him and watched so that she could learn how to do the job herself. Jespersen leaned back and kissed complainant on the cheek and told her that he was sexually aroused when he was close to her. Complainant was surprised and speechless. She backed away from Jespersen and changed the subject. Complainant did not want to offend Jespersen because she wanted him to complete the work that he had agreed to do for her.

b. On August 19, 1995, complainant's stepfather died. Complainant was distraught over his death. On August 20, 1995, complainant asked Kim Jespersen and his daughter Lisa Hensley to come over. Complainant was crying in her bedroom when Jespersen came over with his daughter. Jespersen put his arm around complainant and consoled her. Complainant did not consider this a sexual advance, and felt that Jespersen was sincere.

c. Complainant attended her stepfather's funeral on August 21, 1995. Later that evening, complainant sat on her couch, watching television with her children. Kim Jespersen came by, asked to come in, and also sat on the couch. Jespersen told complainant that he found her to be a "very striking lady" and

that he wanted to have an affair with her. Complainant told Jespersen that she was "flattered" but she did not want to have an affair with a married man. Jespersen also pushed up against complainant and tried to kiss her in the hallway. Complainant told him that she was not interested. Jespersen's comments and conduct greatly upset complainant. She was not flattered by his offer and had told him this only so that he would not be offended. Complainant felt that Jespersen was taking advantage of the fact that she was grief-stricken. She needed Jespersen's help repairing her trailer, and did not want a sexual affair.

d. Kim Jespersen continued to spend time at complainant's trailer in August, helping her with the work there. On at least ten occasions, Jespersen pushed against her or reached out and attempted to grab complainant's buttocks. Each time, complainant told Jespersen to stop. She told him, "I don't want you doing that." Complainant was angered by Jespersen's conduct, but at the same time did not want to anger Jespersen, because she needed his help to get her trailer registered.

e. In August and September 1995, Kim Jespersen made numerous telephone calls to complainant. Jespersen called either from his home when his wife was away or from his mother's home. In these calls, Jespersen repeatedly told complainant that he missed her and could not wait to see her again.

f. On or about August 31, 1995, Kim Jespersen came to complainant's trailer as she was washing dishes. Jespersen had some Ritalin pills, a prescription stimulant medication to treat hyperactivity. He asked her if she wanted some Ritalin. Complainant had made a promise to her stepfather as he was dying that she would "stay clean" and take care of her children. She was tempted by the offer but, remembering her promise, told Jespersen that she was not interested. Jespersen came up to complainant, pushed against her and tried to kiss her. Complainant pushed him away with her hand and told him that the only thing that she wanted from him was for him to do the work he had promised on her trailer. Complainant's rebuff angered Jespersen and he walked off and told her, "Okay, fine. Then don't expect any favors out of me."

16. Complainant and respondents had not previously signed a written lease agreement. In late August 1995, complainant and Kim Jespersen signed a rental agreement for trailer space 21 in which complainant agreed to pay \$175 monthly rent. They backdated the lease agreement to July 1, 1995.

17. On Labor Day weekend, Kim Jespersen came by complainant's trailer and told complainant that he could not continue helping her with the room addition because his wife did not want him spending so much time with complainant. Jespersen said he would continue working on some stairs and other work at the trailer.

18. Kim Jespersen's wife, Betty Jespersen, had a child care business at her home. On occasion, Betty Jespersen provided child care to complainant's children. In September 1995, complainant and Betty Jespersen got into an argument because complainant was late picking up her children from Betty Jespersen. During the argument, complainant told Betty Jespersen that Kim Jespersen had been making sexual advances toward complainant. Betty Jespersen already suspected that her husband was flirting with complainant or that complainant was flirting with her husband. Thereafter, Betty Jespersen or one of her daughters usually accompanied Jespersen when he went to complainant's trailer.

19. On or about September 25, 1995, Kim Jespersen came alone to fix complainant's kitchen sink. While complainant was attempting to show Jespersen the problem, he rubbed the side of

complainant's thigh and told her, "If you do this for me, I'll do something for you." Complainant shoved his hand away from her and backed away from him. She told him that she did not want to be involved with him and that the only thing she wanted from him was for him to finish the repairs. Complainant walked toward her daughter's bedroom. Jespersen followed her and pinched her buttocks. Complainant slapped Jespersen's hand and told him to stop. Jespersen backed complainant up against her child's crib and said to her, "Well, that's not what your breasts are telling me. They're telling me a different story." Complainant told Jespersen to leave. Jespersen responded, "Yeah, I can see what they're saying," and grabbed her breasts. Complainant pushed his hands down and told Jespersen to leave. Complainant's daughter, Alisha, came in and saw Jespersen grabbing at her mother's breasts. Jespersen said that he would be back with his wife to repair the sink and left. After this incident, Jespersen's unwelcome sexual conduct ceased.

20. Around the time she moved into the Trailer Park, complainant began seeing Cindy Swenson, a licensed clinical social worker, for counseling on issues of childhood sexual abuse and to strengthen her resolve to stay free of drugs. Complainant had been sexually abused and molested by several men as a child and teenager. Kim Jespersen's sexual advances reminded her of these earlier experiences and made complainant feel that men were again taking advantage of her. Complainant saw Swenson weekly. Complainant told Swenson about Jespersen's sexual advances and touchings, as incidents with Jespersen occurred. Swenson observed that complainant was angry and "very stressed" by Jespersen's behavior. Complainant had a hard time dealing with other issues in her life because of the "ongoing situation" of living in the same area with Jespersen. During their sessions, Swenson saw no evidence of drug use on complainant's part.

21. Complainant was very close to her sister-in-law, Radeana Johnson. Complainant talked with Johnson almost every day and discussed Kim Jespersen's sexual advances and her feelings about them with Johnson as the incidents occurred. Johnson observed that Jespersen's sexual advances scared complainant and made complainant very upset, uncomfortable and uneasy. Complainant cried to Johnson as she described Jespersen's actions, and "ranted and raved" when she recounted Jespersen's behavior on September 25, 1995. Complainant was

upset that Jespersen was taking advantage of her and upset because his passes brought up memories of childhood sexual abuse.

22. After the last incident of unwelcome sexual conduct on September 25, 1995, complainant continued to live at the Trailer Park for nearly 15 more months. During this time, she had less frequent contact with Kim Jespersen.

23. In October 1995, complainant was spreading gravel around her driveway near her trailer to avoid getting muddy when she got out of her truck. Kim Jespersen came by and objected to her putting gravel down. Jespersen also told her to remove a flag she had placed on a utility pole. She had placed the flag there in July, with no objection from Jespersen. Britta Jespersen had told Kim Jespersen to have complainant move the flag because it appeared to be flying at half staff on the Trailer Park's utility pole.

24. At approximately 9:00 p.m. on November 18, 1995, Kim Jespersen knocked at complainant's door. He handed her an envelope with papers and told her that she needed to fill them out right away. The paperwork included a state application to register her trailer. Complainant was upset that Jespersen came over so late, and wrote him a letter telling him that he had violated her privacy. She asked that he notify her 24 hours in advance that he was coming for non-emergencies. Sometime after this date, complainant began locking access to her site to block Jespersen's access and to prevent other Trailer Park residents from taking her children's toys.

25. On November 20, 1995, complainant was still upset about Kim Jespersen's appearance at her door on November 18, and afraid of what else Jespersen might do. Complainant called the Trinity County Sheriff's Department to file a complaint against Jespersen. Deputy Steven Frick responded to the call. Complainant told Frick that Jespersen had sexually battered her several times in the past. She gave Frick the details of several incidents during which Jespersen had touched her and asked her for sex. She also told Frick that Jespersen was retaliating against her for rejecting his advances. She told Frick that she wanted to make a report to document what was going on and that she wanted to stop Jespersen from any further harassment. Complainant was very upset and angry as she spoke with Frick.

Frick told her that he would contact Jespersen and then call her back.

26. Deputy Frick contacted Kim Jespersen and told Jespersen he was investigating a possible sexual battery. Jespersen denied that he had any physical contact with complainant. Jespersen told Frick, however, that complainant was a "tease" who was "always wearing short clothes and skirts." Frick told Jespersen to stay away from complainant. After talking with complainant and Jespersen, Frick thought a crime had been committed and referred the matter to the Sheriff's Department detective division and also the District Attorney's office for further investigation and possible prosecution for sexual battery. Frick contacted complainant and told her of his actions. The record did not indicate what happened to the case after Frick's referral.

27. On December 1, 1995, Kim Jespersen sent complainant a letter responding to complainant's November 18, 1995, letter. Jespersen's letter stated that the law provided that mobile home park owners had the right to enter the site of a mobile home at anytime during "reasonable hours." Jespersen stated that complainant was violating park rules by locking access to her site, stated that he had received several complaints of loud and abusive language by complainant toward her children, and noted that she still had not had her trailer inspected and registered.

28. Shortly thereafter, complainant put her trailer up for sale. Complainant decided to sell her trailer because she felt respondents would not allow her to live in peace at the Trailer Park. She did not notify respondents that she was selling her trailer, as required by respondent Trailer Park's regulations.

29. In December 1995, complainant's AFDC check arrived late. Consequently, complainant was late paying her rent to respondents. Complainant had not previously been late in paying her rent. On December 6, 1995, Kim Jespersen handed complainant a handwritten "Notice of Violation" saying that complainant had violated park rules and regulations by failing to pay rent, failing to notify respondents that complainant was selling her trailer, and failing to remove complainant's flag from the utility pole. Jespersen also handed complainant a second copy of his December 1, 1995, letter. At hearing, complainant

characterized the notice as an "eviction notice," but the notice did not mention anything about eviction or termination of complainant's tenancy.

30. Complainant received her AFDC check on December 7, 1995, and that day paid her rent and the late fee to respondent Kim Jespersen's stepdaughter. She also handed his stepdaughter a letter addressed to River Meadow Trailer Park, in care of Kim Jespersen, which stated that she had removed the flag, that she had listed her trailer for sale, and that she felt Jespersen's actions were motivated by her spurning his sexual advances. Jespersen gave this letter to his mother.

31. Complainant's trailer was still in rough condition and she did not find a buyer for it. She did not have enough money to finish the repairs immediately. She continued to live at the Trailer Park for another year.

32. Complainant had contacted the Department following her receipt of the December 6, 1995, Notice of Violation. She filed her complaints with the Department in this matter on February 8, 1996.

33. On or about June 25, 1996, Kim Jespersen called the Department of Housing and Community Development, Division of Codes and Standards, to tell them that complainant still had not had her trailer inspected. Thereafter, DHCD sent complainant a notice of violation. Complainant worked with the DHCD housing inspector for several months to fulfill the obligations necessary to complete the inspection.

34. In July 1996, complainant got a job and thus had extra money to finish the work on her trailer. Complainant worked on the trailer from July to September 1996. Complainant remained employed through the date of hearing.

35. On September 10, 1996, Kim Jespersen gave complainant a "Notice to Terminate Tenancy." The Notice said that complainant had failed to follow directives from "State Housing" and the Trailer Park, violated park rules, and failed to pay the full rent and late fee for September 1996. The Notice gave complainant 60 days to leave. On September 11, 1996, complainant again listed her trailer for sale.

36. By early November 1996, complainant had completed the work to have her trailer inspected by DHCD. She needed to obtain Kim Jespersen's signature, however, before she could submit her DHCD application. On or about November 5, 1996, complainant approached Jespersen to sign her application. He refused, telling her, "You had your chance."

37. On November 13, 1996, complainant filed and served a small claims court action seeking \$5,000 against Kim Jespersen, alleging that Jespersen had failed to do the work promised under their oral agreement, that Jespersen had improperly installed a propane regulator, and that her daughter had contracted giardia because Jespersen had failed to warn her that the Trailer Park's water needed to be boiled. Later that day, Jespersen gave complainant another "Notice to Terminate Tenancy." On February 14, 1997, Judge Letton of the Trinity County Superior Court issued a ruling against complainant with regard to the agreement between complainant and Jespersen, and with regard to the propane regulator, but for complainant regarding the ski equipment she had given to Jespersen, and with regard to her daughter contracting giardia from the Trailer Park's drinking water.

38. In December 1996, complainant sold her trailer for \$3,000. On December 14, 1996, complainant moved to Lewiston, California.

39. In September 1997, Britta Jespersen discharged Kim Jespersen as the resident manager of the Trailer Park. Kim Jespersen and his family then moved away. As of the date of hearing, Kim Jespersen had no income and was not employed. As of the date of hearing, respondent Britta Jespersen managed the Trailer Park herself, and had placed it up for sale.

DETERMINATION OF ISSUES

Liability

The Department alleges that respondents harassed complainant because of her sex, female, thereby providing inferior terms, conditions and privileges of tenancy, in violation of Government Code section 12955, subdivision (a). The Department further asserts that because complainant rejected Kim

Jespersen's sexual advances, respondents engaged in discriminatory conduct which eventually forced complainant and her children to move out of their Trailer Park, thus denying or otherwise making a dwelling unavailable to her, in violation of Government Code section 12955, subdivision (k). Respondents deny that they sexually harassed complainant, and further deny that they forced complainant to move from the Trailer Park.

A. Sexual Harassment

1. Sexual Harassment in Housing

Government Code section 12955, subdivision (a), makes it unlawful for the owner of any housing accommodation to discriminate against any person because of the person's sex. "Discrimination" in the housing context, as defined in Government Code section 12927, subdivision (c), includes "the provision of inferior terms, conditions, privileges, facilities, or services" in connection with a housing accommodation. Sexual harassment is a form of sexual discrimination in housing banned by section 12955. (Brown v. Smith (1997) 55 Cal.App.4th 767, 782 [64 Cal.Rptr.2d 301].)

Our Act's housing discrimination provisions are substantially equivalent to the Fair Housing Amendments Act of 1988 (FHAA) (Pub.L. No. 100-430 (Sept. 13, 1988) §13(a), 102 Stat. 1636), 42 U.S.C. §§3601 et seq. Indeed, Government Code section 12955.6 provides that our Act may not be construed to afford the classes it protects fewer rights or remedies than the FHAA. Federal courts have consistently interpreted the FHAA, and its predecessor, the Fair Housing Act, to prohibit sexual harassment in housing. (Krueger v. Cuomo (7th Cir. 1997) 115 F.3d 487, 491; DiCenso v. Cisneros (7th Cir. 1996) 96 F.3d 1004, 1008; Honce v. Vigil (10th Cir. 1993) 1 F.3d 1085, 1089; Williams v. Poretsky Management, Inc. (D.Md. 1996) 955 F.Supp. 490, 495-96; Beliveau v. Caras (C.D.Cal. 1995) 873 F.Supp. 1393, 1396.)

California and federal courts look to the basic principles in employment sexual harassment cases for guidance in cases involving sexual harassment in housing. (Brown v. Smith, supra, 55 Cal.App.4th at 782; Beliveau v. Caras, supra, 873 F.Supp. at 1397.) This is appropriate because both the employment and housing discrimination provisions of the Act are

designed to provide effective remedies which will eliminate discriminatory practices. (Gov. Code, §12920.)

We draw from our employment sexual harassment decisions for our analysis of sexual harassment in housing. Thus, the Department can establish sexual harassment in housing if it demonstrates, by a preponderance of the evidence, that: complainant was subjected to unwelcome sexual conduct or other hostile or unwelcome conduct linked to sex; that such conduct led to the deprivation of a housing benefit or benefits; and, that respondents can be held liable for these actions. (DFEH v. Madera County (1990) FEHC Dec. No. 90-03, at p. 18 [1990 WL 312871; 1990-91 CEB 1]; DFEH v. Richard Perez dba Music Factory (1997) FEHC Dec. No. 97-14, at p. 13 [1997 WL 840031; 1996-97 CEB 3].)

2. Hostile Housing Environment Sexual Harassment

Sexual harassment is unwelcome sexual conduct, or other hostile or unwelcome conduct linked to the victim's sex, which deprives a person of a housing benefit, including the right to live in a discrimination-free housing environment. Deprivation of a discrimination-free housing environment is established if the unwelcome conduct alters the terms, conditions, privileges, facilities or services in connection with an individual's housing accommodation so as to create a hostile, unsafe, or offensive housing environment or otherwise interferes with the quiet enjoyment of the individual's housing environment. (Gov. Code, §12927, subds. (c) and (d); Gov. Code, §12955, subd. (a); cf. Beliveau v. Caras, supra, 873 F.Supp. at 1398.)

a. Whether Unwelcome Sexual Conduct Occurred

The Department asserts that respondent Kim Jespersen subjected complainant to unwelcome sexual comments, advances, and physical assaults from July through September 1995. This behavior, if it occurred, constitutes the kind of hostile sexual conduct that may form the basis for a sexual harassment violation under the Act.

Complainant clearly and credibly testified that respondent Kim Jespersen engaged in numerous instances of unwelcome sexual conduct. Her testimony established that Jespersen: stared at her breasts; kissed her or attempted to kiss her on several occasions; told her he was sexually aroused; invited her to have an affair; pushed himself against her; repeatedly grabbed her breasts and buttocks, once in front of her daughter; rubbed her thigh; called her to tell her he missed her;

and backed her up against her daughter's crib and grabbed her breasts while saying that they signaled that she wanted him. Jespersen persisted in this behavior despite complainant's repeated statements that she was not interested in him and repeated requests that he stop.

Complainant's testimony was credibly corroborated by Cindy Swenson, a licensed clinical social worker. Swenson provided counseling to complainant on issues of complainant's childhood sexual molestation, and to help complainant stay clean from drug use. Swenson had only a professional, not social, relationship with complainant. She saw complainant on a weekly basis during August and September 1995; in these sessions, complainant told Swenson about Kim Jespersen's sexual advances, including his touching her breasts and other parts of her body. Complainant was upset and angry as she related this information to Swenson.

Respondents acknowledge that Swenson's integrity as a witness is not in question, but assert that she merely provided hearsay evidence. Yet, the fact that complainant contemporaneously reported Kim Jespersen's sexual advances to Swenson strengthens the Department's case, and refutes respondents' assertion that complainant fabricated her charges against Jespersen.

Complainant's sister-in-law, Radeana Johnson, also credibly corroborated complainant's testimony. Complainant told Johnson that Kim Jespersen made passes at her and tried to grab her breasts. Complainant told Johnson she was scared and uneasy about Jespersen, because he was working on her trailer and trying to take advantage of her. These contemporaneous reports further support the Department's case.

Respondent Kim Jespersen denied that he engaged in any sexual conduct with complainant. Kim Jespersen testified that he never kissed complainant, never asked her for an affair, never pinched her buttocks, and never pressed against her body. Instead, Kim Jespersen asserted that complainant dressed provocatively, was a "tease," and flirted with him. Kim Jespersen further testified that complainant asked him for drugs, and that complainant had red scars and sores that indicated she used drugs.

Respondents assert that complainant fabricated the instances of unwelcome sexual conduct to avoid having her trailer inspected and to retaliate against respondent Kim Jespersen for pressing her about the inspection. Respondents' theory does not

comport with the facts. Jespersen's unwelcome sexual conduct occurred from July through September 1995. Although Jespersen knew that complainant's trailer had not passed inspection, he had allowed complainant to move into the Trailer Park, signed a rental agreement with her, and helped her repair her trailer for inspection. Jespersen did not pressure complainant about completing the trailer inspection papers until November 18, 1995, months after his sexual advances.

Kim Jespersen's blanket denial of his unwelcome sexual conduct toward complainant was not credible. His assertion that complainant asked him for drugs and that complainant showed signs of drug use was belied by Cindy Swenson, who testified that complainant showed no signs of drug use.

Furthermore, respondents' other witnesses did not corroborate Kim Jespersen's denial of unwelcome sexual conduct. Complainant's neighbor, Brandi Douglas, testified that she saw no sexual harassment, but she was not present when Jespersen harassed complainant. Jespersen's family members also were not present, and had no personal knowledge whether unwelcome sexual conduct occurred. Indeed, Kim Jespersen's own wife suspected that he and complainant were each flirting with the other.

We therefore determine that respondent Kim Jespersen engaged in unwelcome sexual conduct toward complainant, as described in the Findings of Fact.

b. Deprivation of Discrimination-Free Housing Environment

Unwelcome sexual conduct deprives its victim of a discrimination-free housing environment when the hostile or unwelcome conduct linked to the victim's sex is sufficiently severe or sufficiently pervasive to alter the terms, conditions, privileges, facilities or services of the complainant's housing environment so as to create an intimidating, oppressive, hostile, unsafe, abusive or offensive housing environment or otherwise interfere with the quiet enjoyment of an individual's housing environment. (Brown v. Smith, supra, 55 Cal.App.4th at 784, [citing the employment sexual harassment standards developed by the United States Supreme Court in Harris v. Forklift Systems, Inc. (1993) 510 U.S. 17, 23 [114 S.Ct. 367], and by the California appellate court in Fisher v. San Pedro Peninsula Hospital (1989) 214 Cal.App.3d 590, 610 [262 Cal.Rptr. 842]]; Beliveau v. Caras, supra, 873 F.Supp. at 1398; DFEH v. Madera County, supra, 1990-91 CEB 1, at p. 21.)

The objective severity of the harassment is judged from the perspective of a reasonable person in the complainant's position, considering all the circumstances. (Oncale v. Sundowner Offshore Services, Inc. (1998) ____ U.S. ____ [118 S.Ct. 998, 1003].) Our inquiry is guided by "[c]ommon sense, and an appropriate sensitivity to social context." (Ibid.) Sexual harassment against a woman in the context of her home may be more oppressive than at the workplace:

When sexual harassment occurs at work, at that moment or at the end of the work day, the woman may remove herself from the offensive environment. She will choose whether to resign from her position based on economic and personal considerations. In contrast, when the harassment occurs in a woman's home, it is a complete invasion of her life. Ideally, home is the haven from the troubles of the day. When home is not a safe place, a woman may feel distressed and, often, immobile. (Comment, *Home is No Haven: An Analysis of Sexual Harassment in Housing* (1987) 1987 Wis.L.Rev. 1061, 1073, hereinafter *Home is No Haven*.)

From July through September 1995, respondent Kim Jespersen subjected complainant to a pervasive and severe pattern of sexual advances, unwanted telephone calls, and offensive sexual touchings, in her own home. On one occasion, Jespersen grabbed complainant's breasts in the presence of her daughter, Alisha Fraga. Complainant was angered, upset, and threatened by Jespersen's conduct. Complainant had been sexually abused and molested as a child and teenager, and Jespersen's conduct made complainant feel that once again a man was taking advantage of her. Complainant was trying to create a stable home situation for herself and her children, but could not do so because of Jespersen's conduct. Complainant did not invite or want Jespersen's sexual conduct, but at the same time was dependent on him, as her landlord, for both her trailer space and for help in preparing her trailer for inspection.

The resident manager of a housing accommodation holds power over a tenant, much like the power a manager or supervisor holds over a subordinate employee.

[A] supervising employee has enhanced power over subordinate employees just as virtually all housing management employees have power

over all tenants. Supervising employees have the power to fire and discipline subordinates; virtually all housing management employees have the power to terminate and make tenancies more burdensome. (*Home is No Haven*, supra, 1987 Wis.L.Rev. at 1090.)

Even a single offensive touching of a female tenant's breasts or buttocks may be sufficiently severe or pervasive to alter the conditions of the tenant's housing environment, especially where the offensive touching was "committed (1) in the plaintiff's own home, where she should feel (and be) less vulnerable, and (2) by one whose very role was to provide that safe environment . . ." (Beliveau v. Caras, supra, 873 F.Supp. at 1398.)

Complainant was sexually harassed, in her own home, where she should have been safe from such unwanted conduct, by Kim Jespersen, whose very role was to provide that safe environment. Jespersen's unwelcome sexual conduct was severe and pervasive, rendered complainant's housing environment hostile, abusive and offensive, and deprived her of a discrimination-free housing environment.

3. Respondents' Liability

The Department asserts that Britta Jespersen and Kim Jespersen are each liable for Kim Jespersen's sexual harassment of complainant.

a. Britta Jespersen

Our Notice of Opportunity for Further Argument asked the parties to discuss the legal standard the Commission should use to determine whether an owner of a housing accommodation is liable for the unlawful actions of his or her manager. The Department asserts that the Commission should apply the doctrine of respondeat superior, and argues that respondent Britta Jespersen is liable for Kim Jespersen's sexual harassment of complainant. Respondents do not dispute the use of respondeat superior, but argue that any sexual harassment on Kim Jespersen's part was unauthorized by Britta Jespersen and outside the scope of his employment as the Trailer Park's manager. Respondents therefore contend that Britta Jespersen cannot be held liable for Kim Jespersen's conduct.

We have used respondeat superior principles in holding a respondent liable for the acts of his or her agent. (DFEH v. Osamu Kokado (1995) FEHC Dec. No. 95-05, at p. 11 [1995 WL 908702; 1994-95 CEB 3] (property owner liable for co-owner managing agent's refusal to rent and statements of preference, limitation and discrimination); DFEH v. Davis Realty Co. (1987) FEHC Dec. No. 87-02, at pp. 11-12 [1987 WL 114850; 1986-87 CEB 5] (real estate brokerage liable for broker employee's discriminatory refusal to rent, inquiries about marital status, and statements of preference); DFEH v. Norman Green (1986) FEHC Dec. No. 86-07, at p. 11 [1986 WL 74378; 1986-87 CEB 1] (property owner liable for manager's discriminatory misrepresentations, racial inquiries, and statements of preference or limitation).)

Respondeat superior is not, however, the only theory under which a property owner may be held liable for discrimination or harassment of a tenant. As we discuss below, federal fair housing cases as well as analogous employment discrimination cases from the California Supreme Court and the United States Supreme Court lead us to conclude that a property owner may be held directly liable for discrimination and harassment against a tenant under the Act.

(1) Federal Fair Housing Law

Government Code section 12955.6 provides that our Act shall not be construed "to afford to the classes protected under this part, fewer rights and remedies than the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and its implementing regulations (24 C.F.R. 100.1 et seq.)." Section 12955.6 further provides that our Act "may be construed to afford greater rights and remedies to an aggrieved person than those afforded by federal law and other state laws." Thus, federal fair housing law provides a floor, but not a ceiling, for our Act's housing discrimination provisions.

Federal courts have repeatedly recognized that a property owner's duty not to discriminate is non-delegable, and that an owner may be held liable for an agent's or employee's discriminatory acts. The property owner is not only obligated to exercise care in his or her own activities, but to answer for the well-being of those persons to whom the duty runs. (Jankowski Lee & Assoc. v. HUD (7th Cir. 1996) 91 F.3d 891, 896; Walker v. Crigler (4th Cir. 1992) 976 F.2d 900, 904; Marr v. Rife (6th Cir. 1974) 503 F.2d 735, 741 ("The discriminatory conduct of an apartment manager or rental agent is, as a general rule, attributable to the owner and property manager of the apartment complex, both under the doctrine of respondeat superior and because the duty to obey the law is non-delegable."); Phiffer v. Proud Parrot Motor Hotel, Inc. (9th Cir. 1980) 648 F.2d 548, 552.) It is "completely consistent with the spirit of the Fair Housing Act to place on the owner of rental property the responsibility for ensuring that the property complies with the Act." (U.S. v. Reece (D.Mont. 1978) 457 F.Supp. 43, 46, fn. 7.)

In Walker v. Crigler, supra, 976 F.2d 900, the Fourth Circuit found a property owner (Whitesell) liable for his rental agent's (Crigler) discriminatory conduct even where the agent acted outside the scope of her employment. The property owner and the rental agent were sued for sex discrimination under the federal fair housing law. At the trial court level, Crigler was found in violation and ordered to pay damages to the plaintiff. Whitesell, however, was exonerated because he had not instructed or authorized Crigler to discriminate. Indeed, Whitesell had a policy against discrimination and had instructed Crigler not to discriminate. On appeal, the Fourth Circuit reversed the trial court, and entered judgment against the property owner. The

court noted that the conclusion that Crigler had acted outside the scope of her employment was "irrelevant" because "Whitesell could not insulate himself from liability for sex discrimination in regard to living premises owned by him and managed for his benefit merely by relinquishing the responsibility for preventing such discrimination to another party." (Id. at 904.)

The Walker court acknowledged that it was imposing liability on a property owner who had not participated in or authorized the discriminatory conduct, stating,

We are not unmindful of the arguable incongruity of applying liability to Whitesell, and others similarly situated, who are apparently non-culpable in a housing discrimination instance, but must still bear the burden of liability. *The central question to be decided in a case such as this, however, is which innocent party, the owner whose agent acted contrary to instruction, or the potential renter who felt the direct harm of the agent's discriminatory failure to offer the residence for rent, will ultimately bear the burden of the harm caused. It is clear that the overriding societal priority of the provision of 'fair housing through out the United States,' indicates that the one innocent party with the power to control the acts of the agent, the owner of the property or other responsible superior, must act to compensate the injured party for the harm, and to ensure that similar harm will not occur in the future.* (976 F.2d at 904-905, footnotes omitted, emphasis added.)

A property owner may no more delegate away his responsibility under the fair housing laws than his responsibilities to pay taxes or meet health and safety codes. As the Walker court stated,

Just as we feel no qualms in holding a property owner responsible for paying property taxes, meeting health code safety requirements, or ensuring that other responsibilities to protect the public are met, and we refuse to allow the owner to

avoid these responsibilities with an assertion that he had conferred the duty to another, we must hold those who benefit from the sale and rental of property to the public to the specific mandates of anti-discrimination law if the goal of equal housing opportunity is to be reached. (976 F.2d at 905.)

The same reasoning applies to the our Act, which declares housing discrimination to be against public policy (Gov. Code, §12920) and mandates that its housing provisions provide no fewer rights or remedies than federal fair housing law. (Gov. Code, §12955.6.)

(2) California Supreme Court Decisions

Pertinent California Supreme Court decisions involving the employment discrimination provisions of our Act further support the concept of direct liability. Farmers Insurance Group v. County of Santa Clara (1995) 11 Cal.4th 992 [47 Cal.Rptr.2d 478] involved a Santa Clara deputy sheriff (Nelson) who had sexually harassed three female deputies who were under his supervision. The three harassed deputies sued the County and Nelson for sexual harassment under the FEHA. Nelson, in turn, sued the County, under the Tort Claims Act, to indemnify him for his costs of defending against the harassed deputies' sexual harassment suit. Applying respondeat superior principles, the Court recognized that the Nelson's sexual harassment was outside the scope of his employment, and therefore that the County was not obligated to indemnify him. The Court emphasized, however, that the County remained "directly liable" to the harassed deputies for sexual harassment under the FEHA. (Id. at 1020.) The Court said,

Even though, under our analysis, the respondeat superior doctrine would not subject an employer to vicarious liability for sexual harassment exceeding the scope of employment, *employers remain directly liable to sexually harassed workers for violations of the FEHA.* (11 Cal.4th at 1020, citations and footnote omitted, emphasis added.)

To drive home the point that the employer was directly liable, the Court, in the footnote referenced above, noted,

As in fact happened in this case, all three of Nelson's victims obtained substantial judgments against the County on their FEHA claims in the underlying action. (11 Cal.4th at 1020, fn. 19.)

Similarly, in Caldwell v. Montoya (1995) 10 Cal.4th 972 [42 Cal.Rptr.2d 842] the Supreme Court stated that the FEHA "creates *direct* statutory rights, obligations and remedies between a covered 'employer,' private or public, and those persons it considers or hires for employment." (Id. at 989, fn. 9, emphasis in original.) As support for the principle of direct employer liability, the Supreme Court cited various of the FEHA's employment discrimination provisions, including Government Code sections: 12926, subdivision (d) (defining "employer"); 12940, 12941, 12942, 12945, 12945.2, 12945.5, 12946, 12947.5, and 12950 (prohibiting "employers" from various unlawful employment practices); and 12965 (authorizing accusations and civil actions against unlawful employment practices). (Id. at 989, fn. 9.)

Just as the Supreme Court recognized in Farmers Insurance and Caldwell that the Act's employment discrimination provisions establish employers' direct obligations and liability for discrimination and harassment against employees and applicants, analogous sections of the Act's housing discrimination provisions establish property owners' direct obligations and liability for discrimination and harassment against tenants and applicants. These include Government Code sections: 12927, subdivision (d) (defining "owner"); 12955, 12955.1, and 12955.7 (prohibiting "owners" from various unlawful practices in housing); and, 12980 and 12981 (authorizing accusations and civil actions against unlawful housing practices). The purposes of the employment and housing provisions "are, clearly, the same; only their field of operation differs." (Beliveau v. Caras, supra, 873 F.Supp. at 1396.)

(3) United States Supreme Court Decisions

Two recent United States Supreme Court sexual harassment cases also recognize that although a supervisor's sexual harassment may be outside the scope of his employment under respondeat superior principles, the employer may nevertheless be held liable to the harassed employee.

In Faragher v. City of Boca Raton (1998) ____ U.S. ____, 118 S.Ct. 2275, the Supreme Court held that, under Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e et seq.), an employer will be held liable to an employee for sexual harassment

caused by a supervisor, unless it can prove an affirmative defense consisting of two elements: (1) that the employer exercised reasonable care to prevent and correct promptly any harassing behavior; and, (2) that the employee failed to take advantage of any preventative or corrective opportunities provided by the employer to avoid harm otherwise. The Court further found that the City of Boca Raton had failed to exercise reasonable care to prevent harassing behavior, and was therefore liable to a lifeguard who had been harassed by her supervisors. The Court held that an employer will be found liable to an employee harassed by a supervisor, despite its recognition that a supervisor's sexual harassment of an employee is typically considered outside the scope of his employment under respondeat superior principles. (Id. at 2286.) The Court reached a similar holding in a companion opinion announced on the same day, Burlington Industries v. Ellerth (1998) ____ U.S. ____, 118 S.Ct. 2257. Title VII cases do not control the interpretation of the FEHA, but can be instructive. (Johnson Controls, Inc. v. Fair Employment & Housing Com. (1990) 218 Cal.App.3d 517, 539-540 [267 Cal.Rptr. 158].)

Like the federal fair housing cases and the California Supreme Court cases previously discussed, these United States Supreme Court opinions support the conclusion that a property owner may be held directly liable for an agent's sexually harassing conduct, even if the agent's conduct would be considered outside the scope of his employment.

(4) Conclusion

Applying the foregoing to this case, we conclude that respondent Britta Jespersen had a non-delegable duty to provide a discrimination-free housing environment to complainant. Moreover, she may be held directly liable for her managing agent's sexual harassment of complainant.

Respondents assert that any sexual harassment by Kim Jespersen against complainant occurred while he was working pursuant to his "private agreement" to repair complainant's trailer. Respondents assert this agreement had "nothing to do" with his job as the Trailer Park's resident manager. Respondents' argument is not persuasive. To the contrary, the facts amply demonstrate that Jespersen's sexual harassment of complainant "arose out of or was closely related to the landlord-tenant relationship." (Brown v. Smith, supra, 55 Cal.App.4th at 783.)

First, all of the harassment occurred at complainant's trailer and within the Trailer Park, where respondents were legally obligated to provide complainant a safe and discrimination-free environment. Second, Kim Jespersen's harassment was not confined to instances when he was at complainant's trailer pursuant to his agreement with complainant; he harassed her on numerous occasions outside the agreement. Third, the agreement itself grew out of their landlord-tenant relationship; the primary object of the agreement was to prepare the trailer for an inspection that would have benefitted respondents as well as complainant. Finally, we note that although respondents now take pains to separate Jespersen's activities pursuant to the agreement from his activities as the Trailer Park's resident manager, Jespersen made no such distinctions at the time he harassed complainant. Jespersen at all times remained the Trailer Park's resident manager; his agreement to work on the trailer did not give him the right to harass her, and did not relieve respondents of their duty to provide a discrimination-free housing environment. Far from having nothing to do with his role as resident manager, Jespersen's unwelcome sexual conduct had everything to do with creating a hostile housing environment for complainant.^{1/}

^{2/} Since Britta Jespersen's liability turns on her non-delegable duty and direct obligations to complainant, we need not decide whether, under respondeat superior principles, Kim Jespersen's sexually harassing conduct was within the scope of his employment. We are aware that such conduct is typically considered outside the scope of

employment. (Farmers Insurance Group v. County of Santa Clara, supra, 11 Cal.4th at 1013.)

The sexual harassment complainant suffered arose out of and was closely related to the landlord-tenant relationship, and imposed "inferior terms, conditions, privileges, facilities and services" on complainant. (Gov. Code, §12927, subd. (c).) We conclude that respondent Britta Jespersen, and the Trailer Park she solely owns, are liable for that sexual harassment, in violation of Government Code section 12955, subdivision (a).1/

In holding respondent Britta Jespersen liable, we recognize that she did not herself sexually harass complainant, and did not authorize her manager to do so. On the other hand, she had no clear policy against discrimination and had not instructed Kim Jespersen about his obligations under the Act, and so did far less to prevent violations than the property owner who was held liable in Walker v. Crigler, supra, 976 F.2d 900. We will afford complainant no fewer rights and remedies than under the federal fair housing law. (Gov. Code, §12955.6.)

b. Kim Jespersen

The Department further asserts that respondent Kim Jespersen is liable as an "owner" for his sexual harassment of complainant. "Owner" is defined to include a "managing agent" and a person with the right "to rent or lease housing accommodations." (Gov. Code, §12927, subd. (e).) Kim Jespersen had direct responsibility for management of the Trailer Park, including interviewing applicants, collecting rent, and performing maintenance and repairs. Kim Jespersen was a

3/ We recognize that there may be other fact patterns, not present here, where the unwelcome sexual conduct does not arise out of or is not closely related to the landlord-tenant relationship, and for which the property owner would not be held liable. For example, in an employment case, the employer was not liable for a supervisor's sexual assault on an employee that took place away from the work site, and outside of work hours. (Capitol City Foods, Inc. v. Superior Court (1992) 5 Cal.App.4th 1042 [7 Cal.Rptr.2d 418].)

"managing agent" and authorized to "rent or lease housing accommodations" and was thus an "owner" within the meaning of Government Code section 12927, subdivision (e). Respondent Kim Jespersen is therefore liable for his sexual harassment of complainant, in violation of Government Code section 12955, subdivision (a).

B. Denial of a Dwelling

The Department further asserts that respondent Kim Jespersen made complainant's housing environment impossible and then threatened to evict complainant because of her opposition to his sexual harassment. **The Department argues that respondents thereby denied or made a dwelling unavailable to complainant because of her sex, in violation of Government Code section 12955, subdivision (k).**

Our Notice of Opportunity for Further Argument asked the parties to brief whether the Department's section 12955, subdivision (k), claim would more properly have been plead under section 12955, subdivision (f).

The Department's claim is essentially a retaliation claim that should have been brought under Government Code section 12955, subdivision (f), which makes it unlawful for an owner of a housing accommodation "to harass, evict, or otherwise discriminate against any person in the sale or rental of housing accommodations when the owner's dominant purpose is retaliation against a person who has opposed practices unlawful under this section, [or] informed law enforcement agencies of practices believed unlawful under this section" Indeed, we note the complainant's original complaint to the Department alleged a violation of subdivision (f), not subdivision (k). The Department acknowledges that it could have charged a violation of subdivision (f), but argues that subdivision (k) is also applicable.

Government Code section 12955, subdivision (k), provides that it is unlawful, "To otherwise make unavailable or deny a dwelling based on discrimination because of . . . sex." The federal analog (42 U.S.C. §3604(a)) to section 12955, subdivision (k), is a broadly-construed catch-all that has been interpreted to reach practices such as delaying tactics, burdensome application procedures used to limit minority access to housing, racial steering, exclusionary zoning and redlining. (See generally, Schwemm, Housing Discrimination Law & Litigation,

§13.4.) The federal provision "has been construed to reach 'every practice which has the effect of making housing more difficult to obtain on prohibited grounds.'" (U.S. v. Yonkers Bd. of Education (S.D.N.Y. 1985) 624 F.Supp. 1276, 1291, fn. 9, aff'd, (2d Cir. 1987) 837 F.2d 1181, cert. den., (1988) 486 U.S.

1055 (quoting U.S. v. City of Parma, Ohio (N.D. Ohio 1980) 494 F.Supp. 1049, 1053, aff'd as mod. (6th Cir. 1981) 661 F.2d 562, cert. den., (1982) 456 U.S. 926.)

The Department has cited no cases in which the state or the federal provision has been held to reach situations involving a tenant already occupying a housing accommodation. Nevertheless, in view of the broad scope of the federal analog to Government Code section 12940, subdivision (k), and the Legislature's intention, as expressed in Government Code section 12955.6, that our Act be construed to provide no fewer rights and remedies to the protected classes than the federal Fair Housing Amendments Act, we turn to analyze the Department's subdivision (k) claim.

The Department asserts that, once complainant spurned respondent Kim Jespersen's sexual advances, he began a course of discriminatory conduct, including attempts to evict her. The Department further asserts that Jespersen's actions eventually forced complainant to sell her trailer and to move from the Trailer Park. Respondents argue that they had legitimate, non-discriminatory reasons for their actions. Respondents argue that they issued written warnings and eviction notices against complainant because she consistently violated the Trailer Park's rules and failed to have her trailer inspected as required by the state.

A number of incidents and encounters between complainant and respondent Kim Jespersen occurred between the last incident of harassment in September 1995 and complainant's eventual move from the Trailer Park in December 1996. These included: Kim Jespersen's October 1995 objection to complainant spreading gravel around her trailer space; Jespersen's October 1995 order for complainant to remove her flag from the Trailer Park's utility pole; Jespersen's 9:00 p.m., November 18, 1995, appearance at complainant's door with state registration paperwork; Jespersen's December 6, 1995, "eviction notice"; Jespersen's June 1996 call to the state Department of Housing and Community Development (DHCD) regarding inspection of complainant's trailer; Jespersen's September 10, 1996, "Notice to Terminate Tenancy"; Jespersen's November 5, 1996, refusal to sign complainant's DHCD application; and Jespersen's November 13, 1996, "Notice to Terminate Tenancy."

We note initially that complainant continued to live at the Trailer Park for some 15 months after the last incident of sexual harassment. This fact is inconsistent with the Department's assertion that respondents made complainant's housing situation impossible and forced her to move. Moreover, various incidents cited by the Department as examples of respondents' campaign against complainant also do not support its contention.

The incident in which Kim Jespersen reproached complainant over spreading gravel, for example, was at best ambiguous; while it occurred relatively soon after the last incident of sexual harassment, the evidence did not demonstrate that it was linked to complainant's rejection of Jespersen. Similarly, we cannot conclude that Jespersen's order for complainant to remove the flag was sex-based or designed to coerce complainant to move out; indeed, Britta Jespersen's un rebutted testimony was that it was she, not Kim Jespersen, who initially objected to the flag, since complainant had placed it on the Trailer Park's utility pole, apparently at half-mast, so that "it looked like we are flagging for some dead person, and I didn't like that idea."

Complainant was clearly upset that Kim Jespersen brought state registration papers to her trailer on the night of November 18, 1995. On the other hand, the 90 day period for registration had run by this time, and it was in both respondents' and complainant's interest to get the trailer inspected and registered. While it may have been inconsiderate of Jespersen to come to complainant's trailer at 9:00 p.m., we cannot conclude that he did so to harass or retaliate against complainant, or as part of a campaign to make her leave the Trailer Park.

At hearing, complainant characterized respondents' December 6, 1995, Notice of Violation as an "eviction notice." The notice, however, did not mention eviction, did not require complainant to move out, and did not terminate her tenancy. Moreover, there was no showing that respondents took any steps to evict complainant as a result of the notice.

There was little evidence of interaction between complainant and respondents in the ten months between December 1995 and September 1996. That may have been because Kim Jespersen heeded Deputy Frick's warning to stay away from

complainant. Kim Jespersen had contacted the Department of Housing and Community Development about complainant's trailer in late June 1996, but by that time almost a year had passed without complainant having her trailer inspected. While relations between complainant and respondents were less than friendly during this period, it does not appear that respondents were actively seeking complainant's removal from the Trailer Park.

Respondents took no formal action to evict complainant until September 10, 1996, when they gave complainant a Notice to Terminate Tenancy. The notice alluded to the state inspection and registration, violations of park rules, and failure to pay rent. The record does not establish whether complainant had failed to pay her September 1996 rent or violated any rules, but complainant had still not had her trailer inspected. Respondents had a legitimate interest in ensuring that complainant's trailer was properly inspected and registered. By September 1996, nearly a year had passed since the last incident of sexual harassment, and complainant was about a year late getting her trailer inspected and registered. Under the circumstances, we cannot conclude that the Notice to Terminate Tenancy was based on complainant's sex or resistance to Kim Jespersen's sexual advances.

By the time complainant finally brought the inspection papers for Kim Jespersen's signature in November 1996, almost a year had passed since Jespersen had brought the registration papers to complainant's trailer, and complainant was only five days away from the move-out date set in the September 1996 Notice to Terminate Tenancy. Jespersen refused to sign the papers, saying "You had your chance." The record is insufficient for us to conclude that Jespersen's remark referred to complainant's spurning his sexual advances some 15 months earlier. Jespersen's remark just as plausibly referred to complainant's ongoing inability to get her trailer registered.

We note further that respondents did not act to move complainant out once the November 10, 1996, termination date occurred. Instead, they gave complainant a second Notice to Terminate Tenancy, with a January 13, 1997, termination date. Complainant sold her trailer and moved out of the Trailer Park on December 14, 1996.

The Department did not establish that respondents denied or made a dwelling unavailable to complainant because of

her sex, or because she had spurned Kim Jespersen's sexual advances. We therefore find no violation of Government code section 12955, subdivision (k).¹/

Remedy

The Department requests that we order respondents to cease and desist from discriminatory treatment of tenants and prospective tenants on the basis of sex, and pay to complainant her out-of-pocket losses and costs, damages for emotional distress, damages for complainant's children emotional distress, and a civil penalty. The Department also asks for a variety of affirmative relief.

A. Actual Damages

1. Out-of-Pocket Losses and Costs

The Department requests that we order respondents to pay complainant's out-of-pocket losses and expenses, including her moving expenses and an additional rent for the trailer space she moved to after leaving the Trailer Park. We have found no violation in connection with complainant's move out of the Trailer Park. Therefore, we will not order the out-of-pocket losses and expenses sought by the Department.

2. Compensatory Damages for Emotional Distress

The Department requests that the Commission order respondents to pay actual damages to compensate complainant and her children for the emotional distress they suffered as a result of respondents' discrimination. In Walnut Creek Manor v. Fair Employment & Housing Com. (1991) 54 Cal.3d 245 [284 Cal.Rptr. 718, 814 P.2d 704], the California Supreme Court held that the

⁴/ No section 12955, subdivision (f), retaliation violation was alleged by the Department, so we need not decide whether such a violation occurred. We note that under subdivision (f), the Department would have had to prove that respondents' "dominant purpose" was to retaliate against complainant.

Commission's award of actual damages for emotional distress in a housing discrimination case, although authorized by the Act,

violated the judicial powers clause of the California Constitution, article VI, section 1.

Walnut Creek Manor involved an earlier version of our statute. Since that case was decided, the Legislature has enacted two major reforms of the Act's housing discrimination provisions. (SB 1234, Stats. 1992, c. 182; AB 2244, Stats. 1993, c. 1277.) The Legislature's purpose in these enactments was to achieve "substantial equivalency" with the rights and remedies provided in the federal Fair Housing Amendments Act of 1988. (FHAA) (Pub. Law 100-430, 42 U.S.C. §3601, et seq.) Both California enactments specifically authorized the Commission to award actual damages to the complainant. (Gov. Code, §12987, subd. (a)(4).) The availability of actual damages, which includes compensatory damages for emotional distress, parallels equivalent remedies in the federal administrative forum under the FHAA. (42 U.S.C. §3612, subd. (g)(3).) The Legislature has declared, further, that nothing in the housing discrimination provisions of the Act is to be construed to provide fewer rights or remedies than those available under the FHAA. (Gov. Code, §12955.6.) Finally, the Legislature has continued to declare not only that sex discrimination in housing is against public policy, but also its intent to provide "effective remedies which will eliminate such discriminatory practices." (Gov. Code, §12920.)

It is clear that the Legislature intended, post-Walnut Creek Manor, for the Commission to award emotional distress damages, where appropriate, to remedy housing discrimination violations. We will therefore consider such an award in this case. Indeed, the California Constitution requires us to enforce the provisions of our statute under these circumstances. (Cal. Const., art. 3, §3.5.)

The evidence established that respondent Kim Jespersen's sexual harassment caused complainant significant emotional distress. We found the testimony of complainant, her therapist Cindy Swenson, and her sister-in-law Radeana Johnson persuasive on this issue; their testimony was unrebutted by respondents.

Respondent Kim Jespersen repeatedly propositioned complainant, tempted complainant with drugs, pressed himself against her, and grabbed her breasts and buttocks, once in the presence of complainant's daughter. This behavior angered and upset complainant, and brought back memories of her sexual abuse

and molestation as a child and teenager. After being homeless and addicted to drugs, complainant wanted to find a secure, stable environment for her daughters and herself, and to stay drug-free. Instead, she was angry over Jespersen's advances and felt that Jespersen only wanted to take advantage of her.

It was clear at hearing that complainant was still affected by respondent Kim Jespersen's sexual harassment. She was in tears at hearing, especially when describing her reaction to Jespersen's sexual proposition after her stepfather's funeral.

In Krueger v. Cuomo, supra, 115 F.3d 487, the Court of Appeals affirmed a federal Department of Housing and Urban Development Administrative Law Judge's award of \$22,000 in emotional distress damages for sexual harassment in housing, stating,

It demands little in the way of either empathy or imagination to appreciate the predicament of a woman who is harassed in full view of her children, whose home becomes not a sanctuary but the situs of her torment, and who concludes that she has no alternative but to leave a long sought-for apartment. (Id. at 492.)

Some of complainant's testimony went to her emotional distress at having to leave the Trailer Park; because we have found no violation in that regard, we will order no damages for that emotional distress. We will order respondents to pay to complainant \$10,000 in compensatory damages for the emotional distress she suffered as a result of Kim Jespersen's sexual harassment. In addition, respondents will be ordered to pay interest on that amount, at the rate of ten percent per year, compounded annually, from the effective date of this decision until payment. (Code of Civ. Proc., §685.010; DFEH v. Diana D. Light (1995) FEHC Dec. No. 95-04, at p. 16 [1995 WL 908701; 1994-95 CEB 2.1]; DFEH v. Osamu Kokado, supra, 1994-95 CEB 3, at p. 14.)

The Department presented testimony regarding distress suffered by complainant's two minor children caused by the move from the Trailer Park. We have found no violation in connection with complainant's family's move from the Trailer Park, and award no compensatory damages in that regard.

B. Civil Penalty

The Department also asks that respondents be ordered to pay to complainant a civil penalty, asserting that respondent Kim Jespersen's conduct was deliberate, egregious, inexcusable, and oppressive. Government Code section 12987, subdivision (a)(3), authorizes the Commission to order a civil penalty of up to \$10,000. We will order respondent Kim Jespersen to pay a civil penalty.

The nature and circumstances of respondent Kim Jespersen's sexual harassment of complainant support the imposition of a civil penalty against him. As the resident manager of the Trailer Park, Jespersen was obligated to provide complainant a safe housing environment. Instead, Jespersen engaged in multiple instances of unwelcome physical and verbal sexual harassment against complainant. His unwelcome sexual conduct continued despite complainant's repeated requests for him to stop. Some of Jespersen's harassment took place in front of complainant's daughter. Jespersen's conduct was blatant, serious, and outrageous. We will therefore order respondent Kim Jespersen to pay to complainant a civil penalty of \$5,000. In addition, Jespersen will be ordered to pay interest on that amount, at the rate of ten percent per year, compounded annually, from the effective date of this decision until payment. (Code of Civ. Proc., §685.010; DFEH v. Merribrook Apartments (1988) FEHC Dec. No. 88-19, at p. 22 [1988 WL 242651; 1988-89 CEB 7].) We have considered Jespersen's lack of employment and income, and so did not order him to pay the \$10,000 maximum civil penalty.

At the time of hearing, respondent Britta Jespersen had discharged Kim Jespersen as her resident manager, and had placed the Trailer Park up for sale. Under these circumstances, we decline to order a civil penalty against her.

C. Other Relief

The Department further asks that we order respondents to develop, implement, and post a policy against discrimination in housing and to post a notice in any housing accommodations offered for rent by respondents that respondents have violated the Act.

In order to inform her tenants and applicants that discrimination and harassment on the basis of sex is unlawful,

and that relief from such conduct is available, respondent Britta Jespersen will be ordered to post a notice at the Trailer Park, acknowledging respondents' unlawful conduct toward complainant (Attachment A) along with a notice of tenants' rights with regard to unlawful discrimination and harassment under the Act (Attachment B). This part of our order will be ineffective if Britta Jespersen no longer owns the Trailer Park.

ORDER

1. Respondents River Meadow Trailer Park, Britta Jespersen and Kim Jespersen shall cease and desist from unlawful discrimination and harassment in housing on the basis of sex under the Fair Employment and Housing Act.

2. Within 60 days of the effective date of this decision, respondents River Meadow Trailer Park, Britta Jespersen and Kim Jespersen shall pay complainant Toni L. Hollifield \$10,000 as actual damages for her emotional distress, together with interest on this amount at the rate of ten percent per year, compounded annually, from the effective date of this decision until payment.

3. Within 60 days of the effective date of this decision, respondent Kim Jespersen shall pay complainant Toni L. Hollifield \$5,000 as a civil penalty, together with interest on this amount at the rate of ten percent per year, compounded annually, from the effective date of this decision until payment.

4. Within 60 days of the effective date of this decision, respondents River Meadow Trailer Park, Britta Jespersen and Kim Jespersen shall sign notices which conform to Attachments A and B of this decision. Respondent Britta Jespersen shall post copies of the notices in a conspicuous location at the Trailer Park. Posted copies of the notices shall not be reduced in size, defaced, altered, or covered by other material. The notice conforming to Attachment A shall be posted for a period of 90 working days. The notice conforming to Attachment B shall be posted permanently. This portion of our order shall be ineffective if respondent Britta Jespersen no longer owns the River Meadow Trailer Park at the effective date of this decision.

5. Within 70 days of the effective date of this decision, respondents shall report to the Commission and the Department the steps they have taken to comply with this order.

6. Complainant Toni L. Hollifield, on behalf of herself and as guardian ad litem for her two minor children, Kara Hollifield and Alisha Fraga, shall in writing waive any rights or claims she may have under Civil Code section 52 based on the events described in this decision. The Department shall serve copies of the waiver on respondents and the Commission.

The Commission designates this decision as precedential, pursuant to Government Code sections 11425.60 and 12935, subdivision (h).

Any party adversely affected by this decision may seek judicial review of the decision under Government Code sections 11523 and 12987.1, and Code of Civil Procedure section 1094.5. Any petition for judicial review and related papers shall be served on the Department, the Commission, respondents and complainant.

DATED: October 7, 1998

LYDIA I. BEEBE

PHYLLIS W. CHENG

EUIWON CHOUGH

CONCURRENCE

I fully concur in the Commission's decision. I write separately to emphasize the need for property owners to fully instruct their managers about their obligations not to engage in unlawful discrimination or harassment against tenants and applicants. In the present case, respondent Britta Jespersen did not inform her resident manager Kim Jespersen about his obligations under the Fair Employment and Housing Act. Had Britta Jespersen established a clear policy against discrimination and harassment and instructed Kim Jespersen about his obligations, Kim Jespersen might have refrained from his unwelcome sexual conduct against complainant, thus avoiding the present case.

EUIWON CHOUGH

DISSENT

I respectfully dissent. Complainant testified about various instances of respondent Kim Jespersen's sexual conduct toward her from July through September 1995. The evidence also clearly showed, however, that complainant repeatedly allowed or even invited Jespersen into her trailer, and had several friendly conversations with him, in this same time period. Moreover, complainant made no formal complaint about Jespersen's sexual conduct until her call to the sheriff's office in November 1995, and even that call was motivated by Jespersen having come to her trailer regarding the inspection, and not by any current sexual conduct by Jespersen. Under these circumstances, I am unable to conclude that complainant's housing environment was rendered hostile or intimidating during the relevant time period, July through September 1995. Accordingly, I would have dismissed the Department's accusation in its entirety.

THERON E. JOHNSON

ATTACHMENT A

NOTICE
to
APPLICANTS OR TENANTS OF
RIVER MEADOW TRAILER PARK AND BRITTA JESPERSEN

After a full hearing, the California Fair Employment and Housing Commission has ruled that River Meadow Trailer Park, Britta Jespersen, and former resident manager Kim Jespersen violated the California Fair Employment and Housing Act by sexually harassing a tenant. (DFEH v. River Meadow Trailer Park (1998) FEHC Dec. No. 98-15.)

As a result of this finding, the Commission has ordered the posting of this Notice and the following relief:

- 1) Cease and desist from discrimination and harassment against tenants on the basis of sex;
- 2) Payment of damages for emotional distress;
- 3) Payment of a civil penalty;
- 4) Implementation and posting of a written policy against unlawful housing discrimination and harassment.

Dated: _____

By: _____
Britta Jespersen, Owner

THIS NOTICE IS REQUIRED TO BE POSTED UNDER PENALTY OF LAW BY THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING COMMISSION. IT SHALL BE POSTED FOR 90 DAYS FROM THE DATE LISTED ABOVE, AND SHALL NOT BE ALTERED, REDUCED, OBSCURED, OR OTHERWISE TAMPERED WITH IN ANY WAY THAT HINDERS ITS VISIBILITY.

NOTICE
to
APPLICANTS OR TENANTS OF
RIVER MEADOW TRAILER PARK AND BRITTA JESPERSEN

**YOUR RIGHTS AND REMEDIES
under the
CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT**

**YOU HAVE THE RIGHT TO BE FREE FROM UNLAWFUL HOUSING
DISCRIMINATION AND HARASSMENT.**

THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT STRICTLY PROHIBITS DISCRIMINATION AND HARASSMENT IN HOUSING. When you apply to rent a trailer or trailer space or while you are living in this trailer park, it is illegal for the owner or the owner's manager or agent to:

- Deny you a trailer or trailer space, tell you such accommodations are unavailable, or harass you because of your race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability;
- Ask you (either orally or in writing) your race, color, religion, sex, marital status, national origin, ancestry, familial status, or whether you have a disability;
- Make any statement, whether oral or written, indicating that she or he prefers to rent to or wants to limit the available accommodations to any particular race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability status.
- Establish any policy which provides inferior terms and conditions of a tenancy on the basis of race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability.
- Condition the provision of accommodations, services or utilities on sexual favors.

(Continued on next page)

**YOU HAVE THE RIGHT TO COMPLAIN ABOUT UNLAWFUL HOUSING
DISCRIMINATION AND GET RELIEF.**

THE CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING INVESTIGATES AND PROSECUTES COMPLAINTS OF HOUSING DISCRIMINATION. If you feel that any of these illegal practices have happened to you, or that you have been retaliated against because you opposed these practices, you have one year to file a complaint with the state Department of Fair Employment and Housing, at:

Department of Fair Employment and Housing
2000 "O" Street, Suite 120
Sacramento, CA 95814-5212
(800) 233-3212

The Department will investigate your complaint. If the complaint has merit, the Department will attempt to resolve it. If no resolution is possible, the Department may prosecute the case with its own attorney before the Fair Employment and Housing Commission. The Commission may order the unlawful activity to stop, and require the property owner to pay money damages, a civil penalty, and give other appropriate relief. You may also elect to have the Department represent you in court, or you may retain your own attorney to take your case to court.

Dated: _____

By: _____
Britta Jespersen, Owner

THIS NOTICE IS REQUIRED TO BE POSTED UNDER PENALTY OF LAW BY THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING COMMISSION. IT SHALL BE POSTED INDEFINITELY, AND SHALL NOT BE ALTERED, REDUCED, OBSCURED, OR OTHERWISE TAMPERED WITH IN ANY WAY THAT HINDERS ITS VISIBILITY.